IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 07-01-2005

Coram;

The Honurable Mr. Justice V.KANAGARAJ

W.P.No. 230 of 1997

M.Chinnasamy ... Petitioners

Vs.

1. Tenancy Record Officer-cum-Tahsildar,
   Udumalpet.

2. Special Deputy Collector,
   (Appellate Authority), Salem.

3. Revisional Authority & Additional Collector,
   Coimbatore.

4. M.Muthukrishnan
5. Sreedara Sivasubramaniam
6. M.Jagannathan
7. Smt. Sayammal
8. Smt. Kamalam ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the relief as stated therein.

For Petitioner: Mr.T.R.Rajaraman
For Respondents 1 to 3: Mr.R.Chandrasekaran
Govt. Advocate
For Respondents 4 to 6: No appearance
For Respondents 7 & 8: Mr.A.K.Kumarasamy

Order:-

The above writ petition has been filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records of the third respondent in R.Dis.29617/96/C2 dated 28.11.1996 thereby confirming the order of the second respondent dated 22.2.1996 made in A.P.No.27/95 and that of the first respondent's order dated 7.7.1995 made in T.R.No.6/93 and quash the same.

2. In the affidavit filed in support of the above writ petition, the petitioner would submit that the fifth respondent

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is the owner of an extent of 9.05 acres in S.No.4, 5 and 27B in Vadapoothinam village, Udumalpet Taluk and it was leased out by him to the father of the petitioner by name late V.Mounasamy Naidu who died on 21.3.1990 leaving behind him his widow the 8th respondent, three sons i.e. the petitioner and respondents 4 and 6 and one daughter the 7th respondent; that the 4th respondent herein has filed a petition in T.R.No.6/93 on the file of the First respondent under section 4(2) of the Tamil Nadu Agricultural Record of Tenancy Rights Act, 1969 wherein neither the petitioner nor the other heirs were made parties; that on coming to know of the attempt of the fourth respondent to get himself registered as the sole tenant, the petitioner and respondents 6 and 7 filed an application before the first respondent to implead as respondents to the said proceedings on ground that after the death of their father, the lands were in their personal cultivation as his heirs and therefore they should be heard in the said proceedings.

3. The petitioner would further submit that the fourth respondent filed a counter thereby alleging that after the death of their father, he alone is in possession and cultivating the land that the first respondent without understanding the legal right of the heirs of the original tenant, by an exparte order dated 7.7.1995, recorded the fourth respondent as tenant under the Act; that aggrieved by the said order, the petitioner and the 6th respondent herein have preferred an appeal before the second respondent who has held that the claimants have not produced any records to establish their leasehold rights and that they are not cultivating the lands in question by exercising their personal labour and thus confirmed the order of the first respondent; that aggrieved by the said order of the appellate authority, the petitioner and the 6th respondent have preferred a revision petition before the 3rd respondent and since the 3rd respondent also confirmed the orders passed by the respondents 1 & 2 even though the revision proceedings therein have produced the orders passed in CMA No.20/1994 by the Sub Court, Udumalpet which arose out of proceedings in O.S.No.560/1993 filed 4th respondent before the District Munsif's Court, Udumalplet, the petitioner has come forward to file the above writ petition.

4. The petitioner would further submit that the third respondent without adverting to the legal right of succession as heirs of the original tenant and the decision of the civil court refusing to grant injunction in favour of the 4th respondent, has come to a wrong conclusion that the petitioner and the respondents 6 to 8 are not entitled to be recorded as tenants under the Act; that admittedly his father Mounasamy Naidu was the tenant under the fifth respondent and he was a cultivating tenant as he was doing personal

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cultivation; that the petitioner and the respondent 6 to 8 were assisting him his cultivation even during his lifetime; that even if the claim of the fourth respondent that he alone was personally cultivating the lands is accepted, the right of the other heirs to get themselves recorded as tenants under the Act along with 4th respondent cannot be denied; that tenancy right is a property right and under the Hindu Succession Act, the petitioner and the respondents 4 and 6 to 8 are the class-I, heirs; that even the personal cultivation by any member of the family of the original tenant amounts to personal cultivation by all and therefore the authorities under the Act ought to have recorded all the heirs of the original tenant as cultivating tenant under the Act.

5. The petitioner would further submit that the respondents 1 to 3 herein have completely misdirected themselves in considering the legal position involved in the case and they were in error in holding that every heir of the deceased tenant should prove their personal cultivation; that a 'cultivating tenant' is defined as 'a person who contributes his own physical labour or that of any member of his family in the cultivation of any land and includes the heir of such person, if the heir contributes his own personal labour or that of any member of his family in the cultivation of the land'; that in the present case, the fourth respondent is the eldest son of the original tenant; that admittedly, there was no partition among the members of the family of late Mounasamy Naidu; that in the circumstances, the cultivation by any of the members of the family of Mounasamy Naidu would amount to cultivation by the family as a whole and under the circumstances, respondents 1 to 3 ought to have recorded all the heirs of the deceased original tenant as Cultivating Tenants under the Act.

6. The petitioner would further submit that the fourth respondent filed a suit in O.S.No.560 of 1993 on the file of the Court of District Munsif, Udumalpet, for a permanent injunction restraining the petitioner and the sixth respondent from interfering with his possession in 'A' and 'B' schedule properties in the suit; that 'B' schedule property in the suit is the subject matter of the proceedings before respondents 1 to 3 herein; that even though in the proceedings before the first respondent, no claim was made based on any family arrangement, the fourth respondent who filed the above suit in December, 1993 set up a case of family arrangement in and by which he was given the right to the lands exclusively; that the fourth respondent also filed I.A.No.1819 of 1993 for a temporary injunction pending disposal of the suit on the same pleading; that the petitioner filed h is counter and contested the application for injunction denying the averment relating to the family arrangement; that the petitioner claimed a right to be a tenant as heir of his father and the learned District

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Munsif, by his order dated 10.2.1994 allowed the application and granted injunction as against which the petitioner preferred an appal in C.M.A.No.20 of 1994 before the Subordinate Judge, Udumalpet, who allowed the appeal insofar as the 'B' schedule property is concerned, which is the subject matter of the writ petition and dismissed the injunction application; that the learned Subordinate Judge has held that the plaintiff (the fourth respondent herein) had not established his exclusive possession of the property and therefore the relief was not granted; that the suit for injunction is still pending; that the petitioner along with his mother and sister (the respondents 7 and 8) have filed O.S.No.425 of 1993 on the file of the Sub Court, Udumalpet on 16.12.1993 for partition of all the properties of his father including the leasehold lands which are the subject matter of the writ petition and the same is pending; that the above facts clearly disclose that the fourth respondent is not in exclusive possession of the leasehold lands; that the parties are all in joint possession and therefore the respondents 1 to 3 ought to have recorded all the heirs of the original tenant as cultivating tenants under the Act.

7. The petitioner would further submit that even though himself and respondents 6 to 8 were ordered to be impleaded as parties to the proceedings by the first respondent, no steps were taken by the fourth respondent to serve his original application on any one of them; that even though the first respondent had directed the fourth respondent to take steps after cultivating them to be impleaded as parties, no step was taken by the fourth respondent by amending the main petition; that in fact, during the pendency of T.R.No.6/1993, a compromise was reached on 3.11.1994 in and by which it was agreed that the petitioner and respondents 4 and 6 would be allotted 1/3rd share each in the leasehold lands and that the 4th respondent would withdraw all the cases including T.R.No.6/1993; that inspite of the above facts, the 4th respondent proceeded with T.R.No.6/1993 without disclosing the civil proceedings and compromise reached between the parties and therefore, the petitioner and other heirs were not in a position to participate in the proceedings before the first respondent and in these circumstances, the authorities ought to have given an opportunity to them to submit their case before deciding the application; that the respondents 1 to 3 have completely ignored the law of succession applicable to the family members of a cultivating tenant and the order recording the fourth respondent alone as the tenant is, therefore, contrary to law and would pray to set aside the same.

8. The fourth respondent would file a counter thereby denying all the allegations of the petition and further submitting that his father Mounasamy Naidu was a cultivating

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tenant to an extent of 9 acres and 5 cents in S.F.Nos.4,5 and 27; that this respondent has been in continuous possession and enjoyment of the lands even during the lifetime of his father by rendering assistance and help by contributing his physical labour and after the demise of his father, he had been in continuous possession and enjoyment of the lands for the past 32 years and hence he filed a petition before the concerned authorities to record his name as cultivating tenant in the record of tenancy after producing requisite documents to establish his claim that he is a cultivating tenant such as adangal extracts, kist receipts, house tax receipts and the Village Administrative Officer has let in evidence before the Appellate Authority to prove that this respondent alone has been continuously cultivating the lands in exclusion of other legal representatives of the deceased erstwhile tenant.

9. This respondent would further submit that the respondents 1 to 3, after elaborately considering the entire arguments and materials placed before them, have rightly and concurrently held that this respondent alone has been cultivating the lands in question in exclusion of the other legal representatives and this respondent alone is in actual physical possession and enjoyment of the suit properties; that the order passed in C.M.A.No.20/1994 against the order in O.S.No.560/1993 has nothing to do with the present proceeding to record this respondent's name as a cultivating tenant; that the respondents 1 to 3 have no jurisdiction to decide the issue or to advert to the legal right of succession as to who is the heir of the original tenant and the respondents 1 to 3 are barred under the very Act to go into the question of legal status of the petitioner and the same has to be decided only by the civil court.

10. This respondent would further submit that the only question that has to be decided and found by the respondents 1 to 3 is as to who is in actual physical possession and enjoyment of the lands in question as cultivating tenant and the authorities below have rightly decided that this respondent alone is the cultivating tenant and that he is entitled to be recorded as a cultivating tenant; that in fact, this respondent as the eldest male member of the family has been cultivating the lands in his individual capacity even during the lifetime of his father and continue to be in possession as cultivating tenant till date; that the third respondent has correctly held that the petitioner and the 6th respondent have not taken any step to file any petition even after a lapse of two years and that they are neither interested to record themselves as tenants nor they were actually cultivating the lands.

11. This respondent would further submit that he filed a

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suit in O.S.No.132 /1996 for permanent injunction restraining the petitioner and others from interfering with his peaceful possession and enjoyment of the suit properties and pending the suit, he also filed I.A.No.4008/1996 for ad-interim injunction and the same was granted and extended from time to time and the same was in force till 27.6.1996 and hence it is clear that this respondent has established his actual physical possession and enjoyment even before the civil court; that there is no relevant material at all produced either before the civil court of before the respondents 1 to 3 by the petitioner to prove that he is in joint possession of this respondent; that it is true that the parties have entered into a compromise on 3.11.1994 but the petitioner has not complied with the conditions stipulated therein and hence the said deed of compromise was not acted upon; that the petitioner has not properly or convincingly established his case before the appropriate authorities notwithstanding the fact that the petitioner was aware of the proceeding in the trial court for about 2 years from 12.7.1993 to 7.7.1995 and for 8 months in the appellate Court; that in a petition to record a particular person's name as tenant, only the actual physical possession and enjoyment of a cultivating tenant would be gone into and the
respondents 1 to 3 have rightly exercised their power within their jurisdiction and they need not go into the question of law of succession in a petition filed under the Record of Tenancy Act. On such grounds and further submitting that he has been in actual physical possession and enjoyment of the lands for the past 32 years as cultivating tenant, this respondent would pray to dismiss the above writ petition.

12. The 8th respondent would file a counter affidavit on behalf of the 7th respondent also, she would support the contents of the writ petition as substantially true and correct. She would further submit that her late husband Mounsasamy was admittedly recorded tenant of the concerned petition properly under 5th respondent and the said Mounasamy died on 21.3.1990 leaving behind him this respondent and three sons and a daughter as his legal representatives.

13. This respondent would further submit that when her husband was cultivating the lands in question, they were all helping him in the cultivation and after his death, all his legal heirs continue to cultivate the lands providing their physical labour and as such all the legal heirs of her husband became the tenants of the petition property, entitled to be recorded as tenants in the approved record of tenancy register, maintained by the first respondent; that while so, the fourth respondent, with a malafide intention and without the knowledge of the other legal heirs, has filed a petition in T.R.6/93

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before the first respondent under Section 4(2) of the Tamil Nadu Agricultural Record of Tenancy Rights Act 1969 for recording him as a tenant in the place of her deceased husband; that on coming to know the deceitful intention of the 4th respondent, the petitioner, the 7th respondent and this respondent have filed a petition before the first respondent praying to implead them as parties to T.R.6/93 and to hear their objections which was contested by the fourth respondent stating that after the death of Mounasamy Naidu, he is solely doing the cultivation and others are not entitled to object his petition; that the enquiry was adjourned from time to time; that ultimately, the enquiry was posted to 3.7.1995 on which day, the first respondent suo motu appears to have adjourned the enquiry to 7.7.1995 on the ground that he was engaged in other duty; that subsequently, they were neither informed about the enquiry date nor received any notice from the first respondent about the enquiry date and it appears that the matter was called on 7.7.1995 and the petition was allowed exparte, without recording any evidence either oral or documentary; that the first respondent has committed a grave error in not calling upon the 4th respondent to prove his case by letting in evidence and it is not only an error apparent on the face of the record but a manifest illegality resulting in failure of justice.

14. This respondent would further submit that Section 4(3)(a) of the Act specifically provides as to how an application filed under section 4 of the Act has to be disposed of and it contemplates that before passing an order, the Record Officer shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the parties concerned to make them responsible either orally or in writing; that Rule 11 of the Tamil Nadu Agricultural Lands Record Tenancy Rights Rules, 1969 specifically prescribed the procedure to be followed by the authorities; that the Record Officer is directed to fix a date for hearing and give notice thereof to the applicant and all other persons having interest in the lands; that the first respondent has violated the mandatory direction of giving notice to all parties concerned; that the respondents 2 and 3 have also lost sight of the fact that the other legal representatives were not given a reasonable opportunity; that the respondents 1 to 3 have failed to note that the term 'Cultivating Tenant' would include the legal heirs of the deceased tenant also; that the respondents 1 to 3 have erroneously erred in casting the burden of proof on the other legal heirs overlooking that it is the 4th respondent who has approached the authorities to record him as a tenant of the land and hence he has to prove his case by letting in evidence. On such arguments, these respondents would pray to allow the above writ petition.

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15. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both what comes to be known is that the above writ petition has been filed by the petitioner praying to call for the records of the third respondent in R.Dis.29617/96/C2 dated 28.11.1996 thereby confirming the order of the second respondent dated 22.2.1996 made in A.P.No.27 of 1995 and that of the first respondent's order dated 7.7.1995 made inT.R.No.6/93 and quash the same.

16. The case of the petitioner in short is that the 5th respondent herein is the owner of an extent of 9.05 acres of land in S.No.4,5 and 27B in Vadapoothinam village, Udumalpet Taluk; that the said property had been leased out in favour of the petitioner's father V.Mounasamy Naidu, who died on 21.3.1990 leaving behind, his widow, the 8th respondent Kamalam, their sons viz., petitioner and the respondents 4 to 6 and daughter Sayammal, the 7th respondent herein as his legal heirs; that the petitioner's brother 4th respondent filed T.R.63/93 under section 4(2) of the Tamil Nadu Agricultural Record of Tenancy Rights Act, 1969 for recording his name as a tenant in the place of his deceased father; that the petitioner and the other heirs were not made parties to the said proceedings; that they filed application before the first respondent Tahsildar, Udumalpet, stating that the lands were in their personal cultivation and they should be heard in the said proceeding but on the contrary the 4th respondent argued that he was only in possession after the death of his father as the Cultivating tenant and the first respondent Tahsildar, Udumalpet, without giving effect to the legal rights of the petitioner and the other legal heirs of the original tenant by his order dated 7.7.1995 recorded the 4th respondent as Cultivating Tenant. Aggrieved, the petitioner and the 5th respondent preferred an appeal to the second respondent and the appellate authority stating that the petitioner and others have not produced any records to establish their claim and that they are not cultivating the lands in question thereby confirming the order of the first respondent, aggrieved against which, the petitioner and the 6th respondent preferred a revision before the 3rd respondent who too committed the same error as the appellate authority and the initial authority and confirmed the order of the lower authorities and hence the above writ petition.

17. The strong case put up on the part of the petitioner is that he himself and his brothers and sister besides the 4th respondent, are the legal heirs of their deceased father and they all continue to be in possession and enjoyment of the lands in question and cultivating the same as the cultivating

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tenants under the owner stepping into the shoes of their father, but in spite of themselves being the interested parties they were not either properly heard or recognised as the tenants and without giving due opportunity, the first respondent Tahsildar Udumalpet decided the case in favour of the 4th respondent which came to be upheld by the appellate authority and the revisional authority as well and therefore on such legal grounds, the petitioner would come forward to file the above writ petition seeking the relief extracted supra.

18. On a careful perusal of the materials placed on record and upon hearing the learned counsel for the respondents barring the respondents 4 to 6 who have not chosen to appear on the date of hearing of the above writ petition, it could be seen that right from the beginning on initiation of the case in T.R.No.6/93 by the first respondent, the petitioner and the other claimants as cultivating tenants have not been properly heard prior to deciding the matter and since they have got basically a strong case to be put up, full opportunities must have been afforded to them particularly the petitioner herein since this being relevant for consideration in accordance with the principles of natural justice. The authorities should have given full opportunities for all the parties not only to file their petitions seeking inclusion of their names in the Record of Tenancy but also hearing them properly thus deciding the whole matter on merits and in accordance with law and since the authorities below have failed not only the first respondent Tahsildar, Udumalpet but also the respondents 2 and 3, who are the Appellate and Revisional Authorities have decided the matter without observing the legal principles and therefore since it is a vital case that has to be decided in law and in a larger spectrum they should have given adequate and reasonable opportunities to all of the parties connected to the case of Record of Tenancy regarding the lands in question and since no such opportunities have been afforded for all the interested parties particularly to the petitioner as it comes to be seen that on an overall consideration of the entire facts and circumstances of the case and in law it has become necessary on the part of this Court to cause its interference not only in setting aside the orders passed by the respondents 1 to 3 but also further directing the said respondents particularly the first respondent to hear the matter after giving them due opportunity for all the interested parties and dispose of the same in accordance with law and on merits and hence the following order.

In result,

(i) The above writ petition succeeds and it stands allowed;

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(ii) The order passed by the first respondent in T.R.No.6/93 dated 7.7.1995, and confirmed by the appellate authority, the second respondent herein in A.P.No.27/95 dated 22.2.1996 which was upheld by the revisional authority, the third respondent herein in R.Dis.29617/96/C2 dated 28.11.21996 are hereby quashed;

(iii) The matter is remanded to the first respondent, Tahsildar, Udumalpet for fresh disposal with due opportunities for all the interested parties including the petitioner to be heard and to decide the matter on merits and in accordance with law;

(iv) There shall be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Rao/ks

Copy to:
1)Tenancy Record Officer-cum-Tahsildar,
Udumalpet.
2) Special Dy. Collector,
(Appellate Authority),
Salem.
3) Revisional Authority and Addl. Collector,
Coimbmatore.
4) The Record Keeper, VR Section, High Court, Madras.
+ 1 CC to Mr.P.Srinivas, Advocate SR NO 1464
+ 1 CC to Mr.T.R.Rajaraman, Advocate SR NO 1656

W.P.No.230 of 1997
7-01-2005

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